



Department of Environmental Protection

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SHORELAND ZONING NEWS

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MAINE SHORELAND ZONING A HANDBOOK FOR SHORELAND OWNERS

Included with this issue of the *Shoreland Zoning News* is a copy of a new citizen's guide to shoreland zoning, published by the Department of Environmental Protection.

The handbook is designed to help explain Maine's Shoreland Zoning Law and the DEP guideline standards that are most relevant to residential property owners. We think the illustrations and easy-to-read format will help folks understand the basics of shoreland zoning, and clarify the local ordinance standards.

Copies of the handbook are also being distributed at upcoming workshops for code enforcement officers and real estate professionals. Additional copies are available from the DEP on request.

BUFFER STANDARDS

Included with this newsletter is a good example of what one town is doing to help ensure that lake shore property owners are aware of the ordinance standards for maintaining a wooded buffer along the shoreline. The acknowledgement form is presented and signed whenever a shoreland permit is issued.

TIMBER HARVESTING AMENDMENT PROPOSED

Proposed revisions to the timber harvesting standards under the Mandatory Shoreland Zoning Act are currently being considered by the State Legislature. The bill (L.D. #1458), as amended, proposes to remove the prohibition on timber harvesting within 75 feet of a great pond zoned as a Resource Protection District.

In its place, the bill would allow harvesting provided the work is done during frozen ground conditions with no resultant soil disturbance. Otherwise, the harvesting standards would be the same as the current standards for other areas adjacent to great ponds.

Those standards allow timber harvesting of up to 40 percent of the trees in any ten year period provided that no clearings are created and a well-distributed stand of trees and other vegetation is maintained within 100 feet of the shoreline. Outside the 100-foot strip, harvesting is limited to a maximum of 40 percent, but patch cuts of up to 10,000 square feet are permitted.

The Public Hearing on L.D.1458 before the Natural Resources Committee was held on March 22, 1999. Based on the testimony and discussion, it is unclear at this point what the final outcome is likely to be.

If the amendment is adopted, municipalities would then have the option of keeping the current harvesting prohibition in your local ordinance, or replacing it with the new standards. We will keep you posted.

PASS IT ON

Please share this newsletter with other town officials. We keep our costs down and our mailing list manageable by sending four copies to one locally designated contact person in each community for distribution to the other town officials and Code Enforcement Officer.

GUIDELINE AMENDMENTS ADOPTED

On February 6, 1999, the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Chapter 1000) were amended to include the nonconforming structure expansion option (30% rule alternative) as adopted by the Legislature last summer. Also adopted was a revised definition for "Functionally Water-dependent Uses", and a new definition for "Increase in the Nonconformity of a Structure".

The basic provisions of the expansion option were summarized in the summer/fall 1998 *Shoreland Zoning News* (see lower left diagram below).

The emphasis of the rule-making effort was to adopt new buffer strip replanting standards for communities wishing to include a 500 square foot "special expansion allowance" as part of the expansion option (see diagram at lower right).

During the past six months, the DEP staff has been conducting workshops for town officials, in cooperation with the Regional Planning Commissions, to explain the new option, and describe its potential benefits and pitfalls. That effort will continue through the rest of this year.

NEW EXPANSION OPTION COMMON QUESTIONS

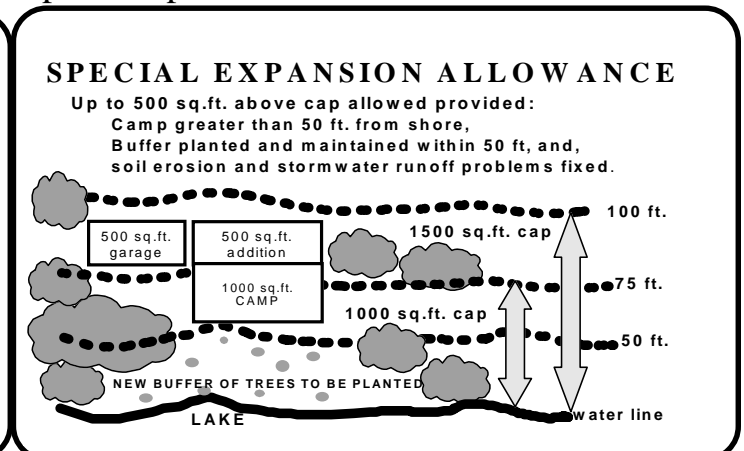
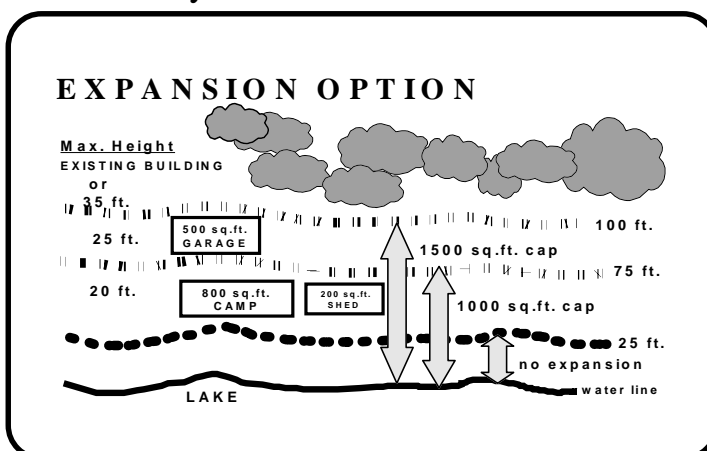
Question #1: Does our town have to adopt the new expansion provisions?

Answer: No. There is no requirement that towns change their current ordinances. Each community needs to decide for itself whether the benefits of the new option warrant changing its current procedures for dealing with nonconforming structures.

Question #2: If our town adopts the 1000 / 1500 square foot cap, do we also have to adopt the 500 square foot special expansion option?

Answer: No. The special expansion allowance (500 sq.ft. bonus) is a second option that may be adopted, or not, as you choose.

The special expansion allowance requires more commitment on the part of town officials in reviewing more detailed projects and on-going monitoring to ensure that erosion control measures are used, and that a wooded buffer is established and maintained according to an approved plan. Because of this extra commitment, many communities are deciding not to include this portion of the expansion option as part of their ordinance.



Question #3: Since the expansion option is in State law, can my town start using it now?

Answer: No. The option must be adopted as an amendment to the local zoning ordinance, and be approved by the DEP, before it goes into effect.

Question #4: Can we adopt the new option and keep the 30% rule, so landowners can use whichever is more beneficial to their situation?

Answer: No. The expansion option, if adopted, **replaces** the 30% rule, and may **not** be used to maximize nonconforming building expansions. The intent of the option is to provide a comparable, and equitable, level of expansion, that is also easier to administer.

Question #5: Does the floor area cap apply to just the principal structure?

Answer: The cap applies to the total floor area of **all** principal and accessory structures located within the shoreline setback area, including the upper floors of multi-story buildings. However, unlike the 30% cap, the new option does allow “crediting” floor area from one building to another so long as the total floor area cap for all structures is not exceeded.

Question #6: Do decks and porches count as floor area under the new option?

Answer: The floor area definition has not changed. Floor Area, as defined in the DEP Guidelines, includes the sum of all horizontal area of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions such as porches and decks.

Question #7: Why were basements not counted as floor area under the new option?

Answer: Two reasons. In working with town officials and landowners on expansion issues over the past ten years, we knew one goal of the new option had to be to simplify the math. Secondly, in setting the square foot caps under the new option, we looked at existing shoreline development patterns to establish a limit that was similar to what would be allowed under the current 30% rule. In evaluating those properties, basement areas were not considered.

Question #8: Why were new building height standards included in the option?

Answer: In order to eliminate the current volume calculation that many folks find difficult to deal with, it was necessary to have a comparable way to limit the overall size of nonconforming structures.

Question #9: What about building reconstruction or adding a new basement to an existing camp?

Answer: The rules have not changed. Any proposal must include provisions for moving the structure to meet the water setback standard to the greatest practical extent. If the site of relocation is still within the setback area, the portion of the structure, and any other buildings, within the setback area count toward the square foot cap.

Question #10: What about all those buildings that have already expanded by 30 percent?

Answer: The new floor area cap, if adopted, applies to those structures as well. If the total floor area of those structures is less than the new cap, further expansion is permitted. If more, no further expansion is allowed.

DISPLAY THE MAP

The DEP staff regularly gets phone calls from landowners complaining that town officials are unable to provide them with a copy of their shoreland zoning ordinance and map. Sometimes, the person at the Town Office is unaware that the Town even has a shoreland ordinance. In these situations the landowner has every right to be upset.

State law requires that zoning ordinances be available for public inspection, and that copies be made available on request. A reasonable fee may be charged to cover copying costs. This requirement is also included in nearly all local shoreland zoning ordinances (typically found in Section 5).

The DEP staff recommends that each Town have several copies of the ordinance and map on file and available to the public. In addition, a copy of the zoning map should be displayed on the wall at the town office. This will help increase public awareness, and allow the property owners to easily determine if their land falls within the shoreland zone.

REMINDER

Amendments to your Shoreland Zoning Ordinance are not legally in effect unless approved by the DEP Commissioner following adoption at Town Meeting. If your Town has adopted amendments, but forgot to send an attested copy to the DEP, you need to do so. This includes any zoning map changes.

SHORELAND ZONING WORKSHOPS

In May, the State Planning Office is again offering one-day shoreland zoning workshops for Code Enforcement Officers. At this point, we are planning five sessions, and hope to use waterfront facilities that have "classroom" space for a morning session, and a good mix of interesting field stations for the afternoon session.

CERTIFIED CEOs NEEDED

Since 1984, the shoreland zoning law has required each town to appoint a code enforcement officer to administer and enforce the municipal shoreland zoning ordinance.

Since 1993, state law has required CEOs to be certified by the State Planning Office within one year of their appointment.

Today, there are still a small number of communities that do not employ a certified code enforcement officer. Given the hundreds of qualified, experienced code officers throughout the State, there is really no excuse for this problem to continue.

The DEP, State Planning Office, and Attorney General's Office are working together to contact the town officials in these communities to advise them of their responsibility, and to offer assistance in locating certified CEOs in the area, and possible agreements for shared CEO services with neighboring communities.

If necessary, the state agencies are prepared to pursue legal action to ensure that each community has a Code Enforcement Officer as required by state law and the local shoreland zoning ordinance.

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